IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY THIRD DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

and
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION No: 18548 of 2004

Between:

1.The Chairman, Bharat Sanchar Nigam Limited,
Ministry of Communications, Sanchar Bhavan,20, Ashoka
Road,New Delhi - 110 001.
2.The Senior Deputy Director General (Vigilance), Department of
Telecom., Ministry of Communications & I.T., West Block No.1,
Wing - 2, R.K. Puram, New Delhi - 110 066.
3.The Chief General Manager Telecom, Bharat Sanchar Nigam
Limited,A.P. Telecom Circle, Doorsanchar Bhavan, Nampally
Station Road, Hyderabad - 500 001.

...PETITIONERS

AND

A. Joharuddin, S/o. Late A.P. Bikari Saheb,
R/o. Quarter No. B6, P & Y Officers Residential Quarters,
Asman Mahal, Khairatabad, Hyderabad.

.....RESPONDENT

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ, Order or direction more particularly one in the nature of writ of Certiorari, calling for the records pertaining to order dated 26-07-2004, in O.A.No.209 of 2004 on the file of the Hon'ble Central Administrative Tribunal, Hyderabad Bench, Hyderabad and quash the same as illegal, arbitrary, contrary to law.

Counsel for the Petitioners: MS.P.SARADA

Counsel for the Respondent: MR.NUTY RAM MOHAN RAO

The Court made the following:

ORAL ORDER: (BY GB,J.)

The Writ Petition is filed by B.S.N.L. challenging the order passed by the Central Administrative Tribunal (for short Tribunal) in O.A.No.209 of 2004 dated 26-7-2004.

2. The respondent was a Central Government employee and he was granted foreign assignment to work with Public Telecom Corporation, Yemen (Yemen Arab Republic) for a period of one year with effect from 11-8-1992, but as the said Government did not relieve him, he could not report back to the duty. Finally he was relieved by the Yemen Government on 17-8-1993. Accordingly, he reported for duty and then he was given appropriate posting by letter dated 3-1-1996. After joining the department, he was also promoted to higher post. The intervening period between 1-8-1995 to 10-3-1996 was also regularized by granting leave of 223 days, the period for which he was out of India. But, however, after a lapse of 4 ½ years, a charge sheet was issued alleging that he was absent from duties from 1-8-1995 to 10-3-1996 and an enquiry was conducted and ultimately the enquiry officer found him guilty of the charge, but however, before issuing the final punishment order, he attained the age of superannuation and was retired from service. Therefore, the punishment was awarded under Rule 9 of C.C.S. Pension Rules withholding the entire pension and gratuity. The said order came to be assailed by the respondent before the Tribunal in O.A.No.209 of 2004. The Tribunal after considering the matter held that the order was not sustainable and accordingly it was set aside by passing the impugned order in O.A.No.209 of 2004. The said order came to be assailed before this Court by B.S.N.L.

3. The learned Standing Counsel for Central Government submits that the order passed by the Tribunal is wholly illegal and without jurisdiction. He further submits that when the deputation was granted for a specific period, it is for the respondent to

ensure that he comes back and report for duty, but he cannot take the shelter that Public Telecom Corporation did not relieve him and therefore, the Tribunal ought to have upheld the order of punishment though issued under Rule 9 of C.C.S. Pension Rules.

4. On the other hand the learned counsel for the respondent-employee submits that the order did not suffer from any illegality or irregularity. The Tribunal having found that the charges were framed in respect of the period for which the leave was granted and that the charges do not indicate any gross misconduct or no financial irregularity is implicated and set aside the order and hence the order cannot suffer from any illegality or irregularity. He relies on the decision of the Supreme Court in **D.V. KAPOOR v UNION OF INDIA & OTHERS** wherein it was held that the employee's right to pension is a statutory right. The measure of deprivation therefore, must be correlative to or commensurate with the gravity of the grave misconduct or irregularity as it offends the right to assistance at the evening of his life as assured under Article 41 of the Constitution of India. The facts in the above case were that the applicant was working in Indian Foreign Service was charged for being found guilty of misconduct and not reporting to duty. He was transferred from Indian High Commission at London to the Ministry of External Affairs, New Delhi, but he did not join duty as commanded, resulting in initiation of disciplinary proceedings against him on 23-8-1979. The Enquiry officer found that the charges against the appellant were proved and held that it is difficult to say that whether his absenting himself from duty was entirely willful. As he submitted in his explanation that his wife was ailing at London and therefore he moved to that place by applying leave. The President accepted the findings of the Inquiry Officer and in consultation with the Union Public Service Commission decided that the entire gratuity and pension otherwise admissible to the appellant was withheld on permanent basis as a measure of punishment. The said order came to be set aside by the Supreme Court by observing as referred to above.

5. Though the learned Standing Counsel for the Central Government submits that the facts in Kapoor's case are different from the facts on hand, we are not impressed with the said contention. Here in this case the employee was sent on deputation with the permission of the Government of India, but when the Yemen Government could not relive him on account of the on-going projects, the employee cannot be found

fault. The Tribunal has discussed this issue in Para Nos. 12 and 13 which are reproduced below:

> "12. We find from the records that though the case of the applicant was approved by the ministry of External Affairs for deputation for two years, but the applicant was sent on deputation to P.T.C Yemen for a period of one year on lien basis with specific permission of Government of India vide Order, dated 11.6.1992 issued by the DOT. However, after completion of one year deputation period, the applicant was not relieved by the PTC Yemen for completing some of the on going projects, for which the present of the applicant at Yemen was considered necessary as mentioned in the letter, dated 17.8.1993, issued by the PTC Yemen. The applicant was relieved with a proper relief order vide letter, dated 29.6.1995 of PTC Yemen. The applicant requested the Department for his posting vide his letter, dated 3.1.1996. Thereafter, he joined the Department as per the modified posting order, dated 23.2.1996 issued by the DOT. For the intervening period, Viz., from 01.8.1995 to 10.3.1996, leave was sanctioned for a period of 223 days of his stay in India, after his relief by PTC Yemen and the same was sanctioned by Memo, dated 30.4.1997 issued by the General Manager, Telecom, Hyderabad District. Thereafter, the applicant was also promoted to D.E cadre in the Senior scale on 12.3.2000 vide order, dated 14.3.2000. The applicant was issued charge sheet for unauthorized absence from 11.8.1993 to 10.3.1996 vide order, dated 26.9.2000. It is true that the allegations against the applicant were again raised only after a period of four and half years after his joining the Department in India. The leave sanction period, i.e., from 01.8.1995 to 10.3.1996 is also included in the charge sheet as unauthorized though the sanction was available before the issue of charge sheet. The applicant was charged for allegation of unauthorized absence which in fact the absence was nothing but overstayal of deputation due to non relief by PTC Yemen. After going through all the facts, we find that the allegations made against the applicant do not indicate any gross misconduct and there are no financial irregularities committed by the applicant, nor caused any damage or loss to the department. Here we take the support of the judgment of the Hon'ble Supreme Court in the case of D.V.Kapoor Vs. Union of India supra and in the light of the decision mere overstayal after sanctioned deputation cannot be a grave misconduct on the part of the applicant. Further as held by the Hon'ble Supreme Court the right of the petitioner to receive pension is proper under Article 31(1) and by a mere executive order the State had no powers to withhold the same. Further the right to pension is valuable right vesting in a Government servant.
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> 13. In the light of the above, we are of the view that the impugned order No.8-33/94-Vig.II dated 30.01.2004 of the 2nd respondent communicated in the name of the President, imposing the penalty of permanently withholding the pension and gratuity with immediate effect cannot hold good and the same is held to be illegal and invalid and the same is accordingly set aside. The respondent authorities are accordingly directed

to release the pension and gratuity consequent on his retirement with effect from 30.06.2003 with all consequential pensionary benefits within two months from the date of receipt of a copy of this order."

6. After going through the above observation of the Tribunal, we do not find illegality or irregularity in the order passed by the Tribunal.

7. Accordingly, the Writ Petition is dismissed. In view of the fact that the employee has already retired and his pension and gratuity are not settled so far, it is appropriate that the petitioners should take immediate action to settle the terminal benefits. Two months time is granted to fix the pension and also for disbursement of the terminal benefits. No costs.

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(G. BIKSHAPATHY, J.)

Date: 23-11-2004

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(P.S. NARAYANA, J.)

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To

1.The Chairman, Bharat Sanchar Nigam Limited,
Ministry of Communications, Sanchar Bhavan,20, Ashoka
Road,New Delhi - 110 001.
2.The Senior Deputy Director General (Vigilance), Department of
Telecom., Ministry of Communications & I.T., West Block No.1,
Wing - 2, R.K. Puram, New Delhi - 110 066.
3.The Chief General Manager Telecom, Bharat Sanchar Nigam
Limited,A.P. Telecom Circle, Doorsanchar Bhavan, Nampally
Station Road, Hyderabad - 500 001.

4 The Registrar, General Administrative Tribunal, Hyderabad Bench, Hyderabad.

5 Two C.D. copies.